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In the Supreme Court of the United States

OCTOBER TERM, 1993

AMERICAN DREDGING COMPANY, PETITIONER

v.

WILLIAM ROBERT MILLER

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF LOUISIANA

BRIEF FOR THE UNITED STATES AS AMICUS CURIAE SUPPORTING RESPONDENT

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QUESTION PRESENTED

Whether admiralty cases filed in state court under the Jones Act, 46 U.S.C. App. 688, and the "saving to suitors" clause, 28 U.S.C. 1333(1), are governed by the state rather than the federal law of *forum non conveniens.*

EDITOR'S NOTE

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BRIEF FOR THE UNITED STATES AS AMICUS CURIAE SUPPORTING RESPONDENT

INTEREST OF THE UNITED STATES

The question presented in this case is whether, consistent with doctrines of admiralty preemption, the States may adopt and enforce their own rules of *forum non conveniens* in cases arising under general maritime tort law and the Jones Act, 46 U.S.C. App. 688. The United States has a substantial interest in assuring that the federal interest in the uniformity of maritime law is vindicated, while at the same time avoiding unnecessary encroachment upon the ability of States to legislate on matters of legitimate state concern. At the Court's invitation, the United States filed a brief amicus curiae at the petition stage of this case.

STATEMENT

1. Respondent, a Mississippi resident, moved to Pennsylvania to seek employment in 1987. Petitioner, a Pennsylvania corporation with its principal place of business in New Jersey, hired respondent to work on the M/V John R., a tug operating on the Delaware River.

Respondent was injured in the course of that employment on the Delaware River. He was subsequently treated for his injuries in Pennsylvania, New York, and Mississippi. Pet. App. A10.

2. On December 1, 1989, respondent filed this action in the Civil District Court for the Parish of Orleans, Louisiana. J.A. 7-9. Respondent requested relief under the Jones Act, 46 U.S.C. App. 688(a), which authorizes a seaman who suffers personal injury "in the course of his employment" to bring "an action for damages at law."[1] Respondent also sought to recover under general maritime law for unseaworthiness of the tug and for wages and maintenance and cure. See J.A. 7-9.[2]

Petitioner moved to dismiss the action for lack of personal jurisdiction and under the doctrine of *forum non conveniens*. The state trial court rejected petitioner's challenge to personal jurisdiction, noting that petitioner had appointed an agent for service of process in Louisiana. That ruling is not at issue here.[3] Petitioner's motion to dismiss the complaint under the doctrine of *forum non conveniens*, however, was granted. Pet. App. A4.

[1] By providing "an action in negligence for the death or injury of a seaman," the Jones Act overturned the effect of prior maritime case law holding that "seamen could recover under general maritime law for injuries resulting from unseaworthiness, but not negligence." *Miles* v. *Apex Marine Corp.*, 498 U.S. 19, 29 (1990). The state courts "have jurisdiction, concurrently with the federal courts, to enforce the right of action established by the * * * [Jones] Act." *Panama R.R.* v. *Vasquez*, 271 U.S. 557, 562 (1926).

[2] As this Court has explained, "[w]hen a seaman is injured he has three means of recovery against his employer: (1) maintenance and cure, (2) negligence under the Jones Act, and (3) unseaworthiness." *McAllister* v. *Magnolia Petroleum Co.*, 357 U.S. 221, 224 (1958).

[3] Petitioner argued (J.A. 16-17) that respondent's claim was unrelated to petitioner's contacts with the forum and that petitioner lacked the continuous and systematic contacts necessary to justify the assertion of personal jurisdiction on a general jurisdiction theory. See *Helicopteros Nacionales de Colombia, S.A.* v. *Hall*, 466 U.S. 408, 414-419 (1984). The trial court rejected petitioner's argument on the ground that petitioner's appointment of an agent for service of process constituted consent to be sued. Pet. App. A3. Petitioner did not challenge that ruling on appeal.

Dismissal was predicated on the trial court's finding, not challenged here, that Louisiana "ha[d] absolutely no connection with the case" and was an inconvenient forum. Pet. App. A4. The court acknowledged that those facts were irrelevant under state law because La. Code Civ. Proc. Ann. art. 123(C) (West Supp. 1993) expressly bars dismissal of respondent's claim on grounds of inconvenience.[4] Pet. App. A4. The court nevertheless held that state law was preempted in maritime actions filed in state court, relying on the Fifth Circuit's analysis of that issue in *Exxon Corp.* v. *Chick Kam Choo*, 817 F.2d 307 (1987), rev'd on other grounds, 486 U.S. 140 (1988). Applying the federal maritime rule of *forum non conveniens*, the court dismissed the action. Pet. App. A4. The Louisiana Court of Appeal for the Fourth District affirmed. *Id.* at A5-A9.

3. The Supreme Court of Louisiana reversed. Pet. App. A10-A19. The court first determined that under Article 123(C) of the Louisiana Code of Civil Procedure, "the doctrine of forum non conveniens is specifically made unavailable in * * * Jones Act or maritime law case[s]" brought in Louisiana state courts. Pet. App. A14. The court further determined that the state law that renders the doctrine unavailable is not preempted. The court reasoned that, under settled federal law, States are free to provide a remedy for maritime torts as long as the remedy does not effect a change in "substantive maritime law" or contravene a "fundamental feature of admiralty law." *Id.* at A15. In the court's view, the rule

[4] Under La. Code Civ. Proc. Ann. art. 123(B) (West Supp. 1993), a state court may dismiss a suit "in which a claim or cause of action is predicated solely upon a federal statute and is based upon acts or omissions originating outside of this state, when it is shown that there exists a more appropriate forum outside of this state." Article 123(C), however, provides that "[t]he provisions of Paragraph B shall not apply to claims brought pursuant to 46 [U.S.C. App.] § 688 or federal maritime law."

of *forum non conveniens* applied by federal courts is not a substantive or fundamental feature of the general maritime law.

In so holding, the court relied primarily on the decision in *Missouri ex rel. Southern Ry.* v. *Mayfield*, 340 U.S. 1 (1950). *Mayfield* determined (*id.* at 3) that state courts are not required to apply the federal doctrine of *forum non conveniens* in cases arising under the Federal Employers' Liability Act (FELA), 45 U.S.C. 51 *et seq.*, even though liability under the FELA is governed by federal substantive law. The Supreme Court of Louisiana concluded (Pet. App. A15-A16) that the *Mayfield* analysis should also govern Jones Act claims in state courts because the Jones Act expressly incorporates the remedial provisions of the FELA.[5]

Further, the Supreme Court of Louisiana found it significant that in diversity cases (28 U.S.C. 1332), the Fifth and Eleventh Circuits have treated the doctrine of *forum non conveniens* as "procedural" for purposes of *Erie R.R.* v. *Tompkins*, 304 U.S. 64 (1938). See Pet. App. A16-A17; see also note 11, *infra*. Noting that this Court has applied a "reverse-*Erie*" doctrine in addressing maritime preemption issues (*Offshore Logistics, Inc.* v. *Tallentire*, 477 U.S. 207, 223 (1986)), the state supreme court held that "the doctrine of forum non conveniens is not a substantive feature of the general maritime law" and that the state rule is not preempted. Pet. App. A19.[6]

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[5] Congress has provided that "all statutes of the United States modifying or extending the common-law right or remedy in cases of personal injury to railway employees shall apply" in Jones Act suits. 46 U.S.C. App. 688(a). Accordingly, the Jones Act is "based upon, and incorporates by reference," the FELA. *Garrett* v. *Moore-McCormack Co.*, 317 U.S. 239, 244 (1942).

[6] In that regard, the state supreme court emphasized that the application of Article 123(C) will "not be outcome determinative" because the substantive law applied in this case—the Jones Act and general federal maritime law—will be the same whether the case is litigated in Louisiana or Pennsylvania. Pet. App. A17-A18.

SUMMARY OF ARGUMENT

1. The Supreme Court of Louisiana correctly held that the doctrine of *forum non conveniens* is not a characteristic feature of admiralty law that must be governed by a uniform federal rule. Although the Constitution extends the judicial power of the United States to "all Cases of admiralty and maritime Jurisdiction" (U.S. Const. Art. III, § 2, Cl. 1), Congress has consistently given the States substantial power to adjudicate maritime cases. Under the "saving to suitors" clause of 28 U.S.C. 1333(1), a state court may exercise *in personam* jurisdiction over a maritime action and may "'adopt such remedies, and * * * attach to them such incidents, as it sees fit' so long as it does not attempt to make changes in the 'substantive maritime law.'" *Madruga* v. *Superior Court*, 346 U.S. 556, 561 (1954) (quoting *Red Cross Line* v. *Atlantic Fruit Co.*, 264 U.S. 109, 124 (1924)). Accordingly, States may apply their statutes to maritime cases unless their laws "contravene[] the essential purpose expressed by an act of Congress or work[] material prejudice to the characteristic features of the general maritime law or interfere[] with the proper harmony and uniformity of that law in its international and interstate relations." *Southern Pacific Co.* v. *Jensen*, 244 U.S. 205, 216 (1917).

2. a. Although the doctrine of *forum non conveniens* has traditionally been a feature of maritime law, that fact does not require that it be given preemptive effect in state court. First, the doctrine is not a unique feature of admiralty, but is one of general application in civil cases. Second, application of the doctrine has traditionally been committed to the trial court's discretion, showing that uniformity of application is not a central policy of the doctrine itself. And third, the doctrine's traditional application in admiralty cases has been in cases involving foreign parties.

b. The effect of the State's policy decision to make the defense of *forum non conveniens* unavailable in maritime and Jones Act cases properly brought in its courts is

merely to provide another forum for redress of a tort that is itself defined by substantive maritime law. Under the federal maritime preemption principles articulated by this Court, that is a choice available to a State. Where a State is merely providing a more effective remedy—without materially affecting the substantive legal standards imposed upon vessel operators—this Court has been reluctant to find preemption.

c. The State's authority to apply its own forum convenience policy, moreover, is supported by Congress's determination that the States' venue determinations should prevail in related statutory contexts. This Court has indicated that state, not federal, venue policies govern the choice of a state court forum under the Jones Act (see *Bainbridge* v. *Merchants & Miners Transportation Co.*, 287 U.S. 278 (1932)), and that congressional policy should apply with equal force to a seaman's related maritime claim for personal injury. Cf. *McAllister* v. *Magnolia Petroleum Co.*, 357 U.S. 221 (1958). In addition, in *Missouri ex rel. Southern Ry.* v. *Mayfield, supra,* this Court held that States are free to adopt or reject a *forum non conveniens* defense in cases brought under the Federal Employers' Liability Act (FELA), 45 U.S.C. 51 *et seq.*—a federal tort statute that applies to railroad employers in interstate commerce, requires uniformity, and is incorporated by reference into the Jones Act. These enactments indicate that the application of state law governing the selection of a state-court forum does not impermissibly interfere with needed uniformity in tort actions arising in interstate commerce.

ARGUMENT

THE STATE'S APPROACH TO *FORUM NON CONVENIENS* IN MARITIME CASES DOES NOT INTERFERE WITH THE NECESSARY UNIFORMITY OF FEDERAL MARITIME LAW OR WORK MATERIAL PREJUDICE TO CHARACTERISTIC FEATURES OF THAT BODY OF FEDERAL LAW

A. The "Saving To Suitors" Clause Permits State Courts To Adjudicate *In Personam* Maritime Actions, Provided That The Available Remedies Are Consistent With Substantive Federal Maritime Law

1. *Article III grants federal courts authority to develop and apply principles of admiralty law*

Article III extends the judicial power of the United States to "all Cases of admiralty and maritime Jurisdiction." U.S. Const. Art. III, § 2, Cl. 1. That jurisdictional grant has traditionally been understood to serve two substantial federal interests; as Justice Story explained, "the admiralty jurisdiction naturally connects itself, on the one hand, with our diplomatic relations and duties to foreign nations, and their subjects; and, on the other hand, with the great interests of navigation and commerce, foreign and domestic." J. Story, *Commentaries on the Constitution* § 870, at 618-619 (abridged ed. 1833) (1987 reprint); see, *e.g.*, *The Moses Taylor*, 71 U.S. (4 Wall.) 411, 430-431 (1867); 1 E. Benedict, *The American Admiralty* § 9, at 10-11 (G. McCloskey 5th ed. 1925); see also *The Federalist* No. 80, at 538 (A. Hamilton) (J. Cooke ed. 1961). Thus, the "fundamental purpose" underlying the grant of federal admiralty jurisdiction is "[t]o preserve adequate harmony and appropriate uniform rules relating to maritime matters and bring them within control of the Federal Government." *Knickerbocker Ice Co.* v. *Stewart*, 253 U.S. 149, 160 (1920).

Consistent with that purpose, this Court has construed the Admiralty Clause of Article III and implementing statutory provisions not only to confer admiralty and

maritime jurisdiction on the federal courts, but also to confer upon those courts the power to develop and apply a federal common law of admiralty. *Romero* v. *International Terminal Operating Co.*, 358 U.S. 354, 360-361 (1959); G. Gilmore & C. Black, *The Law of Admiralty* § 1-9, at 20 (2d ed. 1975). Because the Constitution does not define "the precise limits" of the system of maritime law (*The Lottawanna*, 88 U.S. (21 Wall.) 558, 574 (1875)), the federal courts are called upon "to draw on the substantive law 'inherent in the admiralty and maritime jurisdiction,' and to continue the development of this law within constitutional limits." *Romero*, 358 U.S. at 361 (quoting *Crowell* v. *Benson*, 285 U.S. 22, 55 (1932)); see, *e.g.*, *Knickerbocker Ice*, 253 U.S. at 160 ("The Constitution itself adopted and established, as part of the laws of the United States, approved rules of the general maritime law."); *American Ins. Co.* v. *356 Bales of Cotton*, 26 U.S. (1 Pet.) 511, 546 (1828) (Marshall, C.J.) ("the law admiralty and maritime, as it has existed for ages, is applied by our courts to the cases as they arise"). The federal courts must do so, moreover, with an eye toward preserving "the uniformity and consistency at which the Constitution aimed on all subjects of a commercial character affecting the intercourse of the States with each other or with foreign states." *The Lottawanna*, 88 U.S. (21 Wall.) at 575.

2. *Congress has preserved a substantial role for the States in adjudicating maritime disputes*

Despite the strong federal interest in uniform rules of admiralty, Congress has consistently preserved a substantial role for the States in the adjudication of admiralty and maritime disputes.[7] In implementing its authority over

[7] Congress's preservation of significant state authority is consistent with the general understanding of maritime law in the international sphere. As this Court has explained:

> Whilst it is true that the great mass of maritime law is the same in all commercial countries, yet, in each country, peculiarities exist as to some of the rules, or in the mode of enforcing them. Especially is this the case on the outside boundaries of the law, where it comes in contact with, or shades off into the local or municipal law of the particular country and affects only its own merchants or people in their relations to each other. Whereas, in matters affecting the stranger or foreigner, the commonly received law of the whole commercial world is more assiduously observed—as, in justice, it should be.

The Lottawanna, 88 U.S. (21 Wall.) at 572.

admiralty cases in Section 9 of the Judiciary Act of 1789, ch. 20, 1 Stat. 77, the First Congress provided for the exclusive jurisdiction of the district courts in admiralty and maritime cases, "saving to suitors, in all cases, the right of a common law remedy, where the common law is competent to give it." Currently, Section 9's successor gives district courts "original jurisdiction, exclusive of the courts of the States, of * * * [a]ny civil case of admiralty or maritime jurisdiction, saving to suitors in all cases all other remedies to which they are otherwise entitled." 28 U.S.C. 1333(1).[8] Although the pertinent jurisdictional statute has always vested "exclusive" jurisdiction in federal courts, it is well settled that the so-called "savings to suitors" clause has left the States with significant authority to adjudicate admiralty and maritime claims.

This Court has interpreted the "saving to suitors" clause to mean that "[a]dmiralty's jurisdiction is 'exclusive' only as to those maritime causes of action begun and carried on as proceedings *in rem*, that is, where a vessel or thing is itself treated as the offender and made the defendant by name or description in order to enforce a lien." *Madruga*, 346 U.S. at 560.[9] Section 1333(1) accord-

[8] Although the clause was amended to its present form in 1948 and 1949, "this change in no way narrowed the jurisdiction of the state courts under the original 1789 Act." *Madruga*, 346 U.S. at 560 n.12; see *Offshore Logistics*, 477 U.S. at 222-223.

[9] The "saving to suitors" clause was originally phrased to cover only "common law" remedies, and "[a] proceeding *in rem*, as used

ingly "leave[s] state courts 'competent' to adjudicate maritime causes of action in proceedings *'in personam,'* that is, where the defendant is a person, not a ship or some other instrument of navigation." 346 U.S. at 560-561.

It is also well established that when a state court has "concurrent jurisdiction" over a maritime claim under the "saving to suitors" clause, the State may " 'adopt such remedies, and * * * attach to them such incidents, as it sees fit' so long as it does not attempt to make changes in the 'substantive maritime law.' " *Madruga*, 346 U.S. at 561 (quoting *Red Cross Line*, 264 U.S. at 124); accord, *Romero*, 358 U.S. at 372 n.32.[10] "Stated another way, the 'saving to suitors' clause allows state courts to entertain *in personam* maritime causes of action, but in such cases the extent to which state law may be used to remedy maritime injuries is constrained by a so-called 'reverse-*Erie*' doctrine which requires that the substantive remedies afforded by the States conform to governing federal maritime standards." *Offshore Logistics*, 477 U.S. at 222-223.

The so-called "reverse-*Erie*" doctrine is based upon general principles of admiralty preemption.[11] As this Court has noted:

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in the admiralty courts, is not a remedy afforded by the common law." *The Moses Taylor*, 71 U.S. (4 Wall.) at 431.

[10] Although the "saving to suitors" clause originally saved "the right of a common law remedy" (1 Stat. 77), the term "common law" was understood "to include all legal, equitable and statutory rights and remedies, other than the distinctive admiralty *in rem* proceeding." G. Gilmore & C. Black, *supra*, § 1-13, at 39; see *Red Cross Line*, 264 U.S. at 123-124 (citing cases).

[11] We agree with petitioner (Br. 24-26) and amicus Maritime Law Association of the United States (MLA) (Br. 14-15) that the "reverse-*Erie*" rubric should not be understood to mean that choice-of-law inquiries in the admiralty context necessarily turn on the same dichotomy of substance and procedure that exists in diversity cases. As this Court has explained, "[t]he nub of the policy that underlies [*Erie*] is that for the same transaction the accident of a suit by a non-resident litigant in a federal court instead of in a State court a block away should not lead to a substantially different result." *Guaranty Trust Co.* v. *York*, 326 U.S. 99, 109 (1945). In contrast, the choice-of-law issue in admiralty focuses on whether state law works material prejudice to characteristic features of maritime law requiring uniformity. See *Jensen*, 244 U.S. at 216. As we explain below (see pp. 13-23, *infra*), the decision of the Supreme Court of Louisiana is correct under the *Jensen* standard.

Even under *Erie*, however, federal *forum non conveniens* rules have been applied in diversity cases. See, *e.g.*, *In re Air Crash Disaster Near New Orleans*, 821 F.2d 1147, 1159 (5th Cir. 1987) (en banc), vacated on other grounds *sub nom. Pan American World Airways, Inc.* v. *Lopez*, 490 U.S. 1032 (1989); *Sibaja* v. *Dow Chemical Co.*, 757 F.2d 1215, 1218-1219 (11th Cir.) (per curiam), cert. denied, 474 U.S. 948 (1985). As those decisions explain, the doctrine merely effectuates a court's interest in "control[ling] the administration of the litigation before it and [in] prevent[ing] its process from becoming an instrument of abuse, injustice and oppression." *Sibaja*, 757 F.2d at 1218. It is "a rule of venue, not a rule of decision." *Id.* at 1219. Thus, the contours of the doctrine are a matter for the sovereign whose courts are being used, not the sovereign whose substantive law is being applied. *Cf. Stewart Organization, Inc.* v. *Ricoh Corp.*, 487 U.S. 22, 32 (1988) (state forum-selection policy does not prevent application of the federal transfer-of-venue statute, 28 U.S.C. 1404(a), in diversity cases).

> Although the corpus of admiralty law is federal in the sense that it derives from the implications of Article III evolved by the courts, to claim that all enforced rights pertaining to matters maritime are rooted in federal law is a destructive oversimplification of the highly intricate interplay of the States and the National Government in their regulation of maritime commerce. It is true that state law must yield to the needs of a uniform federal maritime law when this Court finds inroads on a harmonious system. But this limitation still leaves the States a wide scope.

Romero, 358 U.S. at 373 (footnote omitted). Thus, state law may "modify or supplement" (*Just* v. *Chambers*, 312 U.S. 383, 388 (1941)) general maritime law, unless it "contravenes the essential purpose expressed by an act of Congress or works material prejudice to the

characteristic features of the general maritime law or interferes with the proper harmony and uniformity of that law in its international and interstate relations." *Jensen*, 244 U.S. at 216.

This Court has emphasized that "it would be difficult, if not impossible, to define with exactness" when state-law rules may be applied in maritime cases. *Jensen*, 244 U.S. at 216; see, *e.g.*, *Kossick* v. *United Fruit Co.*, 365 U.S. 731, 738 (1961); *Davis* v. *Department of Labor & Industries*, 317 U.S. 249, 253 (1942); Baxter, *Choice of Law and the Federal System*, 16 Stan. L. Rev. 1, 34 (1963); see also *The Lottawanna*, 88 U.S. (21 Wall.) at 574. But it has approved the choice of state-law rules in a variety of contexts—allowing, for example, the maritime application of "[s]tate-created liens[,] * * * [s]tate remedies for wrongful death and state statutes providing for the survival of actions, * * * [s]tate rules for the partition and sale of ships, state laws governing the specific performance of arbitration agreements, [and] state laws regulating the the effect of a breach of warranty under contracts of maritime insurance." *Romero*, 358 U.S. at 373 (footnotes omitted).

The import of those decisions is that each state rule touching upon maritime and admiralty concerns must be considered carefully under the particular circumstances. See *Davis*, 317 U.S. at 253 ("the margins of state authority must 'be determined in view of surrounding circumstances as cases arise'") (quoting *John Baizley Iron Works* v. *Span*, 281 U.S. 222, 230 (1930)). Under the *Jensen* framework, "basic conditions are factual: Does the state law 'interfere with the proper harmony and uniformity of' maritime law?" *Davis*, 317 U.S. at 254 (quoting *Jensen*, 244 U.S. at 216).[12] And the process of

[12] *Jensen* analogized the doctrine of admiralty preemption to the limitations on state power under the dormant Commerce Clause:

> "Where the subject is national in its character, and admits and requires uniformity of regulation, affecting alike all the States, such as transportation between the States, * * * Congress can alone act upon it and provide the needed regulations. * * *." And the same character of reasoning which supports this rule, we think, makes imperative the stated limitation upon the power of the States to interpose where maritime matters are involved.

Jensen, 244 U.S. at 216-217 (citations omitted); see, *e.g.*, *Davis*, 317 U.S. at 257.

decision, in practice, is "one of accommodation" between the need for uniformity and the State's interest in regulating the matter at hand. *Kossick*, 365 U.S. at 739. Thus, even where a state rule of decision may "conflict[] with a rule of maritime law," the Court has been willing to uphold the state rule if the maritime rule "did not require uniformity." *Romero*, 358 U.S. at 373-374.

B. The Doctrine of *Forum Non Conveniens* Is Not a Characteristic Feature of Admiralty Law Requiring Uniformity

For several reasons, the Supreme Court of Louisiana's holding in this case—that the State may apply its own open-forum policy, rather than a federal doctrine of *forum non conveniens*, to maritime claims between domestic parties—is correct.[13] First, at least where domestic parties are concerned, the application of a state rule of forum convenience is not inconsistent with any traditional rule of admiralty reflecting a policy of uniformity. Second, the availability of a state forum to vindicate Jones Act and general maritime claims merely provides a supplemental remedy for rights determined by federal law; it does not subject vessel operators to conflicting standards of tort liability as they travel in interstate commerce. Third, a State's application of its own rule on the subject

[13] This Court has never addressed the preemptive effect of the federal doctrine of *forum non conveniens* in maritime cases. See *Chick Kam Choo* v. *Exxon Corp.*, 486 U.S. 140, 149-150 (1988) (adverting to but not resolving that question). Petitioner cites (Pet. 20 n.7) a number of lower court decisions applying the doctrine of *forum non conveniens* in admiralty. Aside from the Fifth Circuit decisions discussed below (see note 19, *infra*), none of the lower court cases cited by petitioner speaks to preemption of state rules of forum convenience.

is supported by federal statutory policies expressed in the Jones Act and the FELA.

1. *The traditional applicability of the doctrine of* forum non conveniens *in admiralty does not require preemption*

The doctrine of *forum non conveniens* has long been applied by federal courts in admiralty cases. See, *e.g.*, *Canada Malting Co.* v. *Paterson S.S., Ltd.*, 285 U.S. 413 (1932); *Panama R.R.* v. *Napier Shipping Co.*, 166 U.S. 280, 285-286 (1897); *The Belgenland*, 114 U.S. 355, 363-369 (1885); *The Maggie Hammond*, 76 U.S. (9 Wall.) 435, 457 (1870); *Willendson* v. *Forsoket*, 29 F. Cas. 1283 (D. Pa. 1801) (No. 17,682). That fact, however, should not result in the doctrine's treatment as a characteristic feature of admiralty law requiring uniformity.

First, the doctrine of *forum non conveniens* is not unique to admiralty. "Courts of equity and of law [have] also occasionally decline[d], in the interest of justice, to exercise jurisdiction, where the suit is between aliens or non-residents or where for kindred reasons the litigation can more appropriately be conducted in a foreign tribunal." *Canada Malting*, 285 U.S. at 423. Thus, as this Court has held, the doctrine generally applies to any case brought in federal court, including diversity cases governed by state law. See, *e.g.*, *Piper Aircraft Co.* v. *Reyno*, 454 U.S. 235 (1981); *Gulf Oil Corp.* v. *Gilbert*, 330 U.S. 501 (1947); *Koster* v. (*American*) *Lumbermens Mutual Casualty Co.*, 330 U.S. 518 (1947).[14] And the doctrine

[14] In *Gulf Oil Corp.* v. *Gilbert*, *supra*, which established the applicability of the doctrine of *forum non conveniens* in diversity cases, Justice Black dissented based in part on his view that the doctrine of *forum non conveniens* had been applied in maritime cases "[f]or reasons peculiar to the special problems of admiralty." 330 U.S. at 513. The Court, however, found that the doctrine had been validly applied in a broad variety of cases in law and equity, and held that it could properly be applied in a district court sitting

has also been recognized as "part of the common law of many States." *Piper Aircraft*, 454 U.S. at 248 n.13. In fact, this Court has treated admiralty decisions defining the substance of *forum non conveniens* analysis as binding precedent in the nonmaritime context. See *Piper Aircraft*, 454 U.S. at 247-249 (treating the admiralty decision of *Canada Malting* as binding precedent in nonadmiralty diversity action). Those considerations, while not dispositive, confirm that the doctrine does not address policy concerns unique to admiralty.

Second, this Court's precedents confirm that the doctrine is generally administered by the federal courts as a discretionary rule of convenience, not as a substantive right belonging to those engaged in maritime commerce. The operative principle "is simply that a court may resist imposition upon its jurisdiction even when jurisdiction is authorized by the letter of a general venue statute." *Gulf Oil Corp.*, 330 U.S. at 507. In implementing that principle, this Court has refused to "lay down a rigid rule to govern discretion." *Piper Aircraft*, 454 U.S. at 249.[15] Rather, as the Court has made clear, "when an alternative forum has jurisdiction to hear [a] case, and when trial in the chosen forum would 'establish . . . oppressiveness and vexation to a defendant . . . out of all proportion to plaintiff's convenience,' or when the 'chosen forum [is] inappropriate because of considerations affecting the court's own administrative and legal problems,' the court may, in the exercise of its sound discretion, dismiss the case." *Id.* at 241 (quoting *Koster*, 330 U.S. at 524).

Because dismissal on grounds of *forum non conveniens* rests on a trial court's discretion—the exercise of which by the federal district courts is entitled to "substantial def-

in diversity. *Id.* at 504-505, 507-512. Indeed, even Justice Black acknowledged that the doctrine addressed problems of equity as well as admiralty. *Id.* at 513.

[15] For cases explaining the discretionary nature of the doctrine in maritime cases, see, *e.g.*, *The Maggie Hammond*, 76 U.S. (9 Wall.) at 457; *The Belgenland*, 114 U.S. at 365-366; *Napier Shipping Co.*, 166 U.S. at 285.

erence" and is reversible only for "clear abuse of discretion" (*Piper Aircraft*, 454 U.S. at 257)—that doctrine is one that inherently affords substantial leeway in its application. To be sure, the discretion exercised by trial courts is structured by certain factors identified by this Court.[16] But particularly in light of the Court's refusal to countenance assignment of "conclusive or [even] substantial weight" to any one factor in the analysis (*id.* at 250),[17] the discretionary nature of the doctrine leaves room, in many cases, for legitimate judicial disagreement. In light of that fact, it is difficult to maintain, as petitioner does, that uniform application is a crucial policy of the doctrine of *forum non conveniens*.

Third, in its traditional application in admiralty cases, the doctrine of *forum non conveniens* principally related to foreign parties. See, *e.g.*, *Charter Shipping Co.* v. *Bowring, Jones & Tidy, Ltd.*, 281 U.S. 515, 518 (1930); *The Belgenland*, 114 U.S. at 365-366; *The Maggie Hammond*, 76 U.S. (9 Wall.) at 457; *Mason* v. *Ship Blaireau*, 6 U.S. (2 Cranch) 240, 264 (1804); see also *Napier Shipping Co.*, 166 U.S. at 285.[18] Indeed, as recently as 1950, this Court was able to observe that it had never had occasion to apply the doctrine "to a suit brought by a United States citizen" and that "[s]uch application has been rare even in the lower federal courts." *Swift & Co. Packers* v. *Compania Colombiana Del Caribe, S.A.*, 339 U.S. 684, 697 (1950).

Thus, although it is now clear that the doctrine of *forum non conveniens* is not confined to suits involving foreign parties (see, *e.g.*, *Gulf Oil Corp.* v. *Gilbert*, *supra*), the absence of any long-standing, widespread tradition of applying that doctrine in maritime suits between American citizens (see Bickel, *The Doctrine of Forum Non Conveniens as Applied in the Federal Courts in Matters of Admiralty*, 35 Cornell L.Q. 12, 46-47 (1949)) indicates that its unavailability in the circumstances of this case will not significantly impair the interests served by uniform maritime law. See *Madruga*, 346 U.S. at 562 ("The scarcity of reported cases involving [the] partition [of ships at the instance of majority owners] since the Constitution was adopted indicates that establishment of a national partition rule is not of major importance to the shipping world.").[19]

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[16] Generally speaking, the pertinent factors in *forum non conveniens* analysis are as follows:

> The factors pertaining to the private interests of the litigants include[] the "relative ease of access to sources of proof; availability of compulsory process for attendance of unwilling, and the cost of obtaining attendance of willing, witnesses; possibility of view of premises, if view would be appropriate to the action; and all other practical problems that make trial of a case easy, expeditious and inexpensive." The public factors bearing on the question include[] the administrative difficulties flowing from court congestion; the "local interest in having localized controversies decided at home"; the interest in having the trial of a diversity case in a forum that is at home with the law that must govern the action; the avoidance of unnecessary problems in conflict of laws, or in the application of foreign law; and the unfairness of burdening citizens in an unrelated forum with jury duty.

Piper Aircraft, 454 U.S. at 241 n.6 (citation omitted).

[17] This Court has emphasized that "[e]ach case turns on its facts" and has repeatedly rejected the use of per se rules in applying the doctrine. *Piper Aircraft*, 454 U.S. at 249 (citation omitted); see, *e.g.*, *id.* at 246, 249-250; *Koster*, 330 U.S. at 527.

[18] This Court first adverted to such a doctrine in *Mason* v. *Ship Blaireau*, *supra*. There, Chief Justice Marshall, writing for the Court, noted that a question had been raised whether "upon principles of general policy, this court ought not to take cognizance of a case entirely between foreigners." 6 U.S. (2 Cranch) at 264. Noting that "the point does not appear to have been ever settled," the Court found it appropriate to exercise jurisdiction in a case where considerations of "public convenience" favored the exercise and "the parties assent[ed] to it." *Ibid.*

[19] Nor will traditional considerations of international comity (see *The Belgenland*, 114 U.S. at 363) play a role in a case, like the present one, that involves only parties and events within the United States. We note that each of the Fifth Circuit cases embracing a rule of preemption in this area has involved at least some

2. *Louisiana's open-forum rule permissibly supplies a forum for maritime claims without materially intruding upon the uniformity of maritime law*

In this case, Louisiana enacted a rule of forum convenience that, unlike the traditional rule, provides that once personal jurisdiction and venue are established, state courts are without discretion to decline to entertain a maritime case. In our view, that rule may stand under this Court's admiralty preemption cases.

In general, the Court is likely to find uniformity unnecessary where a state-law rule poses only a negligible risk of requiring vessel operators to comply with materially different measures of duty and liability as they travel in interstate or foreign commerce. Cf. *Washington* v. *W.C. Dawson & Co.*, 264 U.S. 219, 228 (1924) (uniformity in maritime law was designed to prevent the "confusion and difficulty" that would result "if vessels were compelled to comply with the local statutes at every port").[20] Consequently, where a state law deals "merely

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foreign parties and/or events. See, *e.g.*, *Ikospentakis* v. *Thalassic S.S. Agency*, 915 F.2d 176, 177 (1990) (suit by Greek citizen against Panamanian corporation and other Greek citizen); *Quintero* v. *Klaveness Ship Lines*, 914 F.2d 717, 719 (1990) (Philippine sailor injured while unloading Liberian-registered, Norwegian-owned ship), cert. denied, 111 S. Ct. 1322 (1991); *Camejo* v. *Ocean Drilling & Exploration*, 838 F.2d 1374, 1375 (1988) (Brazilian plaintiff injured in Brazil; one of defendants was Brazilian entity); *Chick Kam Choo*, 817 F.2d at 309 (Singapore national killed in Singapore). In fact, in the leading case of *Chick Kam Choo*, the Fifth Circuit emphasized the foreign residence of the plaintiff. See, *e.g.*, 817 F.2d at 324 ("Under the federal uniformity doctrine state courts *must* apply the *forum non conveniens* rule of the general maritime law in any case brought before them by citizens of foreign lands over which the federal courts would have admiralty jurisdiction."). This case does not present an occasion for deciding whether the doctrine, as applied to foreign parties, is a preemptive feature of admiralty law.

[20] This point is illustrated in the tort context by the so-called "maritime but local" doctrine, which allowed a State to apply its own compensation remedy to a maritime injury if an injured worker's employment was not directly related to commerce and navigation. See *Director, OWCP* v. *Perini North River Assocs.*, 459 U.S. 297, 306 (1983) (describing "maritime but local" doctrine); see, *e.g.*, *Alaska Packers Ass'n* v. *Industrial Accident Comm'n*, 276 U.S. 467, 468-469 (1928). For example, state law could be used to redress injuries to a carpenter on an unfinished vessel in navigable waters, because the rights and liabilities "had no direct relation to navigation, and the application of the local law cannot materially affect any rules of the sea whose uniformity is essential." *Grant Smith-Porter Ship Co.* v. *Rohde*, 257 U.S. 469, 477 (1922). In contrast, for employees injured or killed while repairing finished vessels, state compensation law was preempted. See, *e.g.*, *Robins Dry Dock & Repair Co.* v. *Dahl*, 266 U.S. 449, 457 (1925); *Great Lakes Dredge & Dock Co.* v. *Kierejewski*, 261 U.S. 479, 480-481 (1923). In the latter situation, a ship owner might face different duties or liabilities in every port visited; thus, "[t]he matter was not of mere local concern, * * * but had direct relation to navigation and commerce." *Robins Dry Dock*, 266 U.S. at 457.

Even where the standard of liability might vary, the Court in some instances has tolerated diversity if it has regarded the effect on uniformity as immaterial. For example, although the Court (prior to *Moragne* v. *States Marine Lines, Inc.*, 398 U.S. 375 (1970)) did not recognize a general maritime right to recover for wrongful death (see *The Harrisburg*, 119 U.S. 199 (1886)), it authorized the States to provide for recovery for wrongful death in their own territorial waters. See, *e.g.*, *The Tungus* v. *Skovgaard*, 358 U.S. 588, 591 (1959); *Western Fuel Co.* v. *Garcia*, 257 U.S. 233, 242 (1921); *Just*, 312 U.S. at 391 (survival-of-action law); see also *Kossick*, 365 U.S. at 739-740 (explaining the rationale for not preempting state wrongful death remedy).

[21] Petitioner does not even cite *Red Cross Line*, but relies (Br. 26-27) principally upon *Garrett* v. *Moore-McCormack Co.*, *supra*, for the proposition that deeply rooted rules of admiralty procedure are preemptive of contrary state law. The Court in *Garrett*

with the remedy in the state courts," without "modify[ing] the substantive maritime law" at issue, the doctrine of admiralty preemption does not require invalidation of the state law. *Red Cross Line*, 264 U.S. at 124.

In *Red Cross Line*, the Court held that a New York court could award specific performance of an arbitration clause in a maritime contract even though that remedy was unavailable under admiralty law.[21] As the Court

later explained, "since such clauses are valid in admiralty and their breach gives rise to an action for damages, to compel arbirtation is really to do no more than substitute a different and more effective remedy for that available in admiralty." *Kossick*, 365 U.S. at 740.

The reasons for sustaining Louisiana's forum convenience policy are, if anything, more substantial than the justification for sustaining the supplemental state remedy in *Red Cross Line*. When the nature of a remedy for a violation of a maritime right is at issue, there may be instances in which a "more effective" remedy will, in practice, alter the degree of care that a vessel operator

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held that a traditional federal maritime rule—assigning to a maritime tort defendant the burden of proving the validity of a release—preempts state law placing the burden on the plaintiff to prove its invalidity. But for several reasons, *Garrett* does not undermine the holding of *Red Cross Line* or warrant reversal of the judgment of the Supreme Court of Louisiana in this case. First, at issue in *Garrett* was the traditional maritime rule that seamen are "wards of admiralty" whose contracts are analogous to those between fiduciaries and beneficiaries; hence, it involved not only the allocation, but also the substance, of the shipowner's burden of proof. 317 U.S. at 247. In other words, unlike *Red Cross Line*, *Garrett* did not merely involve the State's provision of a remedy for a right guaranteed in admiralty. Second, this Court has explained that where a maritime contract "may well have been made anywhere in the world," its validity "should be judged by one law wherever it was made." *Kossick*, 365 U.S. at 741 (state statute of frauds preempted); see, *e.g.*, *Garrett*, 317 U.S. at 244; *Union Fish Co.* v. *Erickson*, 248 U.S. 308, 313-314 (1919); cf. *Osaka Shosen Kaisha* v. *Pacific Export Lumber Co.*, 260 U.S. 490, 495 (1923) (standard for breach); but cf. *Wilburn Boat Co.* v. *Fireman's Fund Ins. Co.*, 348 U.S. 310, 314-321 (1955). Without that uniformity, it would be difficult if not impossible for shipowners and their employees to contract for predictable and uniform rights. Third, as discussed above, to the extent that the doctrine of *forum non conveniens* is a "[d]eeply rooted" (*Garrett*, 317 U.S. at 249) characteristic of maritime law, it is one that traditionally applied when foreign parties sought to invoke the aid of this Nation's courts.

exercises in traveling from State to State[22]—thereby creating the very "confusion and difficulty" (*W.C. Dawson & Co.*, 264 U.S. at 228) that a uniform maritime law is designed to address. That is not even a potential concern here. Louisiana's open-forum statute does not add to or subtract from substantive maritime rights, duties, or remedies; the general maritime law and the Jones Act supply the duty of care and measure of liability, whether this suit proceeds in Louisiana or Pennsylvania. Pet. App. A17-A18.[23] To the extent that either State might seek to apply its substantive law in adjudicating this action, the legitimacy of its doing so would be subject to independent scrutiny under the principle of maritime uniformity. In light of those limitations, the State's legitimate interest in adopting its own policies governing access to its courts should not be displaced.[24]

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[22] For example, in *Chelentis* v. *Luckenbach S.S. Co.*, 247 U.S. 372, 382-384 (1918), the Court held that a seaman injured at sea could recover only the general maritime remedies of wages and maintenance and cure, and could not recover the full indemnity available under state law. In so holding, the Court reasoned that substituting the state-law measure of relief "would distinctly and definitely change or add to the settled maritime law." *Id.* at 382.

[23] For a discussion of the factors used in determining the applicability of the Jones Act and the general maritime law, see, *e.g.*, *Hellenic Lines Ltd.* v. *Rhoditis*, 398 U.S. 306, 308-309 (1970); *Romero*, 358 U.S. at 381-382; *Lauritzen* v. *Larsen*, 345 U.S. 571, 583-592 (1953).

[24] See, *e.g.*, *Mayfield*, 340 U.S. at 3-4 (state law may accept or reject doctrine of *forum non conveniens* as a matter of state policy in FELA cases); *Bainbridge*, 287 U.S. at 280 (Jones Act cases in state court are not governed by Jones Act venue provision; "we should be slow to impute to Congress an intention * * * to interfere with the statutory provisions of the various states fixing the venue of their own courts"); cf. *Stewart Organization*, 487 U.S. at 32 (holding that federal transfer-of-venue provisions set forth in 28 U.S.C. 1404(a) govern in diversity actions, and rejecting the claim that state choice-of-forum policies must be applied under *Erie*).

Where a State merely provides a forum for remedying a maritime tort, "the intrusion into federal interests [is] so minimal" (*Hess* v. *United States*, 361 U.S. 314, 334 n.13 (1960) (Harlan, J., dissenting)) that it is possible, without substantial risk to uniformity,[25] to accommodate the State's interest in having its courts open to maritime claimants. Indeed, because the doctrine of *forum non conveniens* presupposes that exercise of jurisdiction would comport with due process, there is little danger that an

[25] Petitioner argues (Br. 20-21) that the application of state rules of forum convenience will lead to multiple litigation and forum shopping, because a plaintiff whose maritime action is dismissed on grounds of *forum non conveniens* in federal court may simply cross the street to a more favorable state forum. That contention, however, does not undermine our submission. First, as discussed above (see note 11, *supra*), the doctrine of maritime preemption does not focus on forum shopping between state and federal court, but on the need for uniform standards of duty and liability in the diverse geographical venues that a vessel operator may enter. That concern is not implicated where, as here, a finding of nonpreemption will merely affect the availability of a forum, without affecting the applicability of the Jones Act and the general maritime law. Second, in a case such as this one, where all the parties and potential fora are within the United States, it is doubtful that a finding of preemption would eliminate the possibility of forum shopping in any event. Since the 1948 revision of the Judicial Code, a federal court defendant wishing to transfer a lawsuit to a more convenient forum within the United States must file a motion to transfer venue under 28 U.S.C. 1404(a), not a motion to dismiss on *forum non conveniens* grounds. See *Norwood* v. *Kirkpatrick*, 349 U.S. 29, 32 (1955); see also *Continental Grain Co.* v. *Barge FBL-585*, 364 U.S. 19 (1960). And because *forum non conveniens* analysis is similar to, but not the same as, that under Section 1404(a) (see, *e.g.*, *Piper Aircraft*, 454 U.S. at 253; *Norwood*, 349 U.S. at 32), a federal court's ruling under Section 1404(a) would not bar a state court's contrary application of a traditional version of *forum non conveniens*. Cf. *Parsons* v. *Chesapeake & O. Ry.*, 375 U.S. 71, 73-74 (1963) (per curiam) (FELA case holding that "prior state court dismissal on the ground of *forum non conveniens* can never serve to divest a federal district judge of the discretionary power" under Section 1404(a)).

open forum policy will materially prejudice the federal interests protected by a uniform system of maritime law.[26]

The "strictures of the Due Process Clause forbid a state court to exercise personal jurisdiction * * * under circumstances that would offend 'traditional notions of fair play and substantial justice.'" *Asahi Metal Industry Co.* v. *Superior Court*, 480 U.S. 102, 113 (1987) (quoting *International Shoe Co.* v. *State of Washington*, 326 U.S. 310, 316 (1945)). That principle, in turn, requires a court to "consider the burden on the defendant, the interests of the forum State, and the plaintiff's interest in obtaining relief. [A court] must also weigh in its determination 'the interstate judicial system's interest in obtaining the most efficient resolution of controversies; and the shared interest of the several States in furthering fundamental substantive social policies.'" *Asahi*, 480 U.S. at 113 (quoting *World-Wide Volkswagen Corp.* v. *Woodson*, 444 U.S. 286, 292 (1980)). Those considerations —which are analogous to factors considered under the doctrine of *forum non conveniens*—offer substantial assurance that a state court's assertion of jurisdiction will not unreasonably burden an entity operating in maritime commerce. Petitioner has not shown that, in addition, a non-constitutional federal rule of forum convenience is needed to protect vessel operators from undue litigation burdens as they ply their trade from State to State.[27]

[26] Petitioner argues (Br. 23 n.12) that in this case, there are no local interests being vindicated by the adjudication of the present action in Louisiana court. Whatever the merits of that contention, the trial court held that there was a sufficient basis for Louisiana to assert personal jurisdiction (Pet. App. A3), and petitioner did not contest that determination on appeal. Thus, it must be assumed for present purposes that the State has a constitutionally sufficient interest in adjudicating this case.

[27] We believe that the Fifth Circuit erred in asserting that a preemptive federal doctrine of *forum non conveniens* is necessary because "maritime actors, by the nature of their business, cannot avoid sufficient 'minimum contacts' to subject themselves to the jurisdiction of many nations" and the "jurisdictional minima"

3. *Federal statutory policies confirm the validity of Louisiana's application of its own forum convenience rules to Jones Act and general maritime tort cases*

As this Court has explained, federal enactments in related areas are a source of policy guidance for the courts in fashioning federal rules of admiralty law. See *Miles*, 498 U.S. at 27 ("We no longer live in an era when seamen and their loved ones must look primarily to the courts as a source of substantive legal protection from injury and death; Congress and the States have legislated extensively in these areas. In this era, an admiralty court

established by this Court "are not enough to protect [them]." *Chick Kam Choo*, 817 F.2d at 322. Indeed, this Court's precedents point strongly in the opposite direction. First this Court has made clear that when a claim does not arise out of, and is unrelated to, a defendant's activities in a State, jurisdiction over a nonresident corporation may be asserted only if the company has "continuous and systematic general business contacts" with the State. *Helicopteros Nacionales*, 466 U.S. at 415-416. Thus, it is unlikely that a shipping company's passing commercial contacts within a State will suffice to support personal jurisdiction over a claim unrelated to the State. See *id.* at 414-415 (describing the "continuous and systematic" contacts necessary to sustain "general jurisdiction"). Second, the Due Process Clause provides heightened protection in the area traditionally of greatest concern to admiralty courts in applying the doctrine of *forum non conveniens*—cases involving foreign parties. See *Asahi*, 480 U.S. at 114 (in lawsuit involving foreign defendants, the "unique burdens" of defending a lawsuit abroad have "significant weight" in due process analysis); *id.* at 115 (interests of foreign governments and federal interest in "foreign relations policies" are served "by a careful inquiry into the reasonableness of the assertion of jurisdiction in the particular case, and an unwillingness to find the serious burdens on an alien defendant outweighed by minimal interests on the part of the plaintiff or the forum State"). Third, a vessel operator may mitigate the risk of potentially burdensome litigation by bargaining for a reasonable forum-selection clause in its maritime contracts. See *The Bremen* v. *Zapata Off-Shore Co.*, 407 U.S. 1, 10 (1972); see also *Kossick*, 365 U.S. at 735, 741 (maritime contracts that are not of a strongly "local" nature are governed by uniform federal law).

should look primarily to these legislative enactments for policy guidance."); see also *Moragne*, 398 U.S. at 393-396, 400-402.[28] With regard to the question presented here, this Court's interpretation of the Jones Act and the FELA indicates that Congress has not generally required States to apply federal rules of forum selection for suits otherwise governed by a uniform body of federal substantive law. Because Congress has shown particular solicitude for the plaintiff's choice of forum under the Jones Act and the FELA, it would be a particularly unwarranted exercise of federal common law making power to engraft a special layer of federal protection for maritime defendants when Congress has declined to do so.

a. The Jones Act provides that venue is proper in "the district in which the defendant employer resides or in which his principal office is located."[29] 46 U.S.C. App. 688(a). In *Bainbridge* v. *Merchants & Miners Transportation Co.*, *supra*, the Court held that Section 688(a) does not govern venue in Jones Act suits filed in state court. 287 U.S. at 280-281. Rather, the Court determined that "venue [in Jones Act cases] should * * * be[] determined by the trial court in accordance with the law of the state." *Id.* at 281.[30]

[28] Although the Court in *Miles* and *Moragne* looked to state as well as federal statutory policies in determining the content of admiralty law, the issue in this case—whether state law should be preempted on a particular issue—has no analogy in state law itself, and must be determined by consulting appropriate federal statutory analogies.

[29] Although Section 688(a) refers to "jurisdiction," this Court has explained that the provision regulates venue rather than subject matter jurisdiction. See *Pure Oil Co.* v. *Suarez*, 384 U.S. 202, 203 (1966); *Vasquez*, 271 U.S. at 561-562.

[30] The plaintiff in *Bainbridge* filed suit in Philadelphia County, Pennsylvania, but his employer's principal office was in Baltimore, Maryland. 287 U.S. at 279. The state court dismissed the action on the ground that venue was improper under Section 688(a). This Court reversed, holding that the federal rule did not bind the state court.

Although *Bainbridge* does not squarely address the doctrine of *forum non conveniens*, it does indicate either that Congress regarded venue under the Jones Act as a matter of judicial housekeeping that should be federally prescribed only for the federal courts, or that the States' interest in regulating their own dockets outweighs any need for a uniform venue policy in state and federal courts.[31] Further, the Court's construction of Section 688(a) was premised in part on the view that venue in state courts, even for federal maritime causes of action, is presumptively a matter of state law under our federal system. See *Bainbridge*, 287 U.S. at 281.

The Jones Act's policy favoring state control over rules of forum selection should apply equally to actions for personal injury brought under the general maritime law. Because a general maritime claim of unseaworthiness and a Jones Act claim alleging negligence are merely "alternative 'grounds' of recovery for a single cause of action," a judgment on a claim "for unseaworthiness [is] * * * a complete 'bar' to [a] subsequent action for the same injuries under the Jones Act." *McAllister*, 357 U.S. at 224-225. Accordingly, a plaintiff must bring both claims "to make full utilization of his remedies for personal injury." *Id.* at 225. Because the Jones Act's policies concerning forum selection can be effective only if they apply equally to maritime claims that must be raised in the same lawsuit, it would create an unnecessary anomaly (cf. *Moragne*, 398 U.S at 395-396) to implement differ-

[31] This Court's decision in *Romero* v. *International Terminal Operating Co.*, *supra*, further supports that conclusion. In holding that an action filed in state court under the "saving to suitors" clause was not removable to federal court, the Court emphasized "the historic option of a maritime suitor pursuing a common-law remedy to select his forum, state or federal." 358 U.S. at 371. That policy, the Court found, was also incorporated into the Jones Act. See *id.* at 371 n.29. Congress could easily embrace the forum convenience policies advanced by petitioner simply by making general maritime and Jones Act actions removable to federal court.

ent policies for the adjudication of unseaworthiness claims under general maritime law.[32]

b. This Court's construction of the FELA in *Missouri ex rel. Southern Ry.* v. *Mayfield*, *supra*, also supports the view that maritime commerce does not require a uniform rule of forum selection. Under the FELA, state courts must apply uniform federal law in determining whether a railroad is liable to its employees for personal injuries. *Garrett*, 317 U.S. at 244. The Court held in *Mayfield*, however, that state courts are not required to adhere to a uniform federal doctrine of *forum non conveniens* in lawsuits under the FELA. 340 U.S. at 3-4.[33]

[32] Because Jones Act negligence, unseaworthiness, and maintenance and cure are common avenues of relief for a seaman's maritime injuries, a seaman will "rarely" forgo the right "to sue for all three." *McAllister*, 357 U.S. at 224. Accordingly, if a State's forum selection policy is to be respected with regard to claims of Jones Act negligence and unseaworthiness, it would create an unnecessary disuniformity in a seaman's right to recover for maritime injuries if his claim for maintenance and cure could be dismissed on *forum non conveniens* grounds.

[33] In sustaining the application of the State's *forum non conveniens* policy, the Court in *Mayfield* remarked that the State enforced its policy "impartially" without "discriminat[ing] against [FELA] suits." 340 U.S. at 4. Although no such claim has been raised by petitioner, we note that the *Mayfield* Court's caveat is not implicated by the fact that Article 123(C) makes the doctrine of *forum non conveniens* unavailable only in cases brought under the Jones Act or federal maritime law. Because Article 123 is the exclusive source of authority for the Louisiana state courts to dismiss suits on *forum non conveniens* grounds (*Fox* v. *Board of Supervisors*, 576 So. 2d 978, 986-991 (La. 1991)), and because Article 123 does not authorize dismissal of state law claims, there is in fact no discrimination, as relevant here, between state law claims and Jones Act and general maritime claims. To be sure, Article 123(B) appears to authorize dismissal of certain federal claims on *forum non conveniens* grounds in circumstances in which state claims could not be dismissed. But for the reasons discussed above, any concern raised by that provision's unequal treatment of state and federal claims (see *Testa* v. *Katt*, 330

We see no reason why the Court should depart from the nonpreemption principle adopted in *Mayfield*. First, *Mayfield* establishes that Congress has determined that the federal interest in uniform law governing the tort liability of railroad employers in interstate commerce (see *Garrett*, 317 U.S. at 244) does not require a uniform rule of forum convenience. That congressional policy is instructive in determining whether a uniform policy of forum convenience is needed to effectuate the comparable federal interest in a uniform law governing the tort liability of shipping employers in interstate commerce. Second, the relevance of *Mayfield* is particularly strong because the Jones Act—which governs maritime employees' personal injury claims against shippers—"is based upon, and incorporates by reference, the [FELA]," and the FELA has been cited as a source of the Jones Act's uniformity requirement. *Garrett*, 317 U.S. at 244; see 46 U.S.C. App. 688(a); see also note 5, *supra*.[34] We see no basis for finding that Congress's forum selection policies under the FELA should have less force in the context of a related federal statute, the Jones Act, whose critical features are explicitly borrowed from the FELA.

U.S. 386 (1947)) is inapposite where Jones Act or general maritime claims are concerned.

[34] Amicus MLA argues (Br. 16-17) that the FELA case law is inapposite because the Jones Act does not incorporate every aspect of the FELA and because petitioner has also [illegible]d a general maritime claim. The FELA precedent, however, provides a very close analogy because the FELA provides for a uniform scheme of substantive law that is the basis for the Jones Act scheme. As discussed in the text, moreover, this Court's precedents suggest that the Jones Act's forum selection policies should govern in general maritime tort actions as well.

CONCLUSION

The judgment of the Supreme Court of Louisiana should be affirmed.

Respectfully submitted.

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APPENDIX

1. 28 U.S.C. 1333 provides in pertinent part as follows:

> The district courts shall have original jurisdiction, exclusive of the courts of the States, of:
>
> (1) Any civil case of admiralty or maritime jurisdiction, saving to suitors in all cases all other remedies to which they are otherwise entitled.

* * * * *

2. The Jones Act, 46 U.S.C. App. 688, provides in pertinent part as follows:

> (a) Application of railway employee statutes; jurisdiction
>
> Any seaman who shall suffer personal injury in the course of his employment may, at his election, maintain an action for damages at law, with the right of trial by jury, and in such action all statutes of the United States modifying or extending the common-law right or remedy in cases of personal injury to railway employees shall apply.

* * * * *

3. La. Code Civ. Proc. Ann. art. 123 (West Supp. 1993) provides:

> A. For the convenience of the parties and the witnesses, in the interest of justice, a district court upon contradictory motion, or upon the court's own motion after contradictory hearing, may transfer a civil case to another district court where it might have been brought; however, no suit brought in the parish in which the plaintiff is domiciled, and in a court which is otherwise a court of competent juris-

diction and proper venue, shall be transferred to any other court pursuant to this Article.

B. Except as provided in Paragraph C, upon the contradictory motion of any defendant in a civil case filed in a district court of this state in which a claim or cause of action is predicated solely upon a federal statute and is based upon acts or omissions originating outside of this state, when it is shown that there exists a more appropriate forum outside of this state, taking into account the location where the acts giving rise to the action occurred, the convenience of the parties and witnesses, and the interest of justice, the court may dismiss the suit without prejudice; however, no suit in which the plaintiff is domiciled in this state, and which is brought in a court which is otherwise a court of competent jurisdiction and proper venue, shall be dismissed pursuant to this Article. In the interest of justice, and before the rendition of the judgment of dismissal, the court shall require the defendant or defendants to file with the court a waiver of any defense based upon prescription, provided that a suit on the same cause of action is commenced in a court of competent jurisdiction within sixty days from the rendition of the judgment of dismissal.

C. The provisions of Paragraph B shall not apply to claims brought pursuant to 46 [U.S.C. App.] § 688 or federal maritime law.

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